

STATE OF ARIZONA

Department of Revenue



Janet Napolitano
Governor

Gale Garriott
Director

October 11, 2007

Attached please find a copy of a proposed Arizona General Tax Ruling explaining the forms of written and oral advice provided by the Department. This document supersedes and rescinds *Arizona General Tax Ruling* GTR 97-1. In an ongoing effort to interact with and inform the public regarding issues relating to taxation, the Department would appreciate your written comments on this draft.

The proposed draft is the fourth revision released by the Department and contains mostly nonsubstantive changes since the third revision circulated in June. The sole substantive change is found in the discussion of tax rulings and procedures that begins on page 5 of the attached draft. The Department has removed a reference to *Valencia Energy Co. v. Ariz. Dep't of Revenue*, 959 P.2d 1256 (Ariz. 1998) on its own initiative, due to the limitations placed upon estoppel as a judicial doctrine. See 959 P.2d at 1267 ("The court remains the final arbiter of the law; it alone decides the correct interpretation of the law and whether estoppel will nevertheless apply in a given case.")

Please be advised that the deadline for comments is **Friday, November 2, 2007**. Any request for an extension of time for review must also be made by this date. This office will review all comments that are received through this date and make any appropriate revisions before the Department issues the final documents.

Please address your comments to:

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Thank you for your continuing efforts to establish an ongoing line of communication with the Arizona Department of Revenue.

Sincerely,

/s/ Hsin Pai
Tax Analyst
Tax Research & Analysis

Attachments



ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

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ISSUE:

Information concerning written and oral advice provided to taxpayers by the Department of Revenue ("Department").

APPLICABLE LAW:

Arizona Revised Statutes ("A.R.S.") § 42-1004 states:

- A. The department shall administer and enforce the provisions of this title, title 43 and other laws assigned to it and has all the powers and duties prescribed by law for such purposes. In all proceedings prescribed by law the department may act on behalf of this state. In addition, the department shall:
 - 1. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
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 - 6. Provide information and advice within the scope of its duties subject to the laws on confidentiality of information and departmental rules adopted pursuant to such laws.

A.R.S. § 42-1123(C) states:

If the tax, whether determined by the department or the taxpayer, or any portion of the tax is not paid on or before the date prescribed for its payment the department shall collect, as a part of the tax, interest on the unpaid amount at the rate determined pursuant to this section from the date prescribed for its payment until it is paid.

A.R.S. § 42-2052 states:

- A. Notwithstanding sections 42-1123 and 42-1125, no interest or penalty may be assessed on an amount assessed as a deficiency if either:
 - 1. The deficiency assessed is directly attributable to erroneous written advice furnished to the taxpayer by an employee of the department acting in an official capacity in response to a specific request from the taxpayer and not from the taxpayer's failure to provide adequate or accurate information.
 - 2. All of the following are true:

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- (a) A tax return form or tax ruling prepared by the department contains a statement that, if followed by a taxpayer, would cause the taxpayer to misapply this title or title 43.
 - (b) The taxpayer reasonably relies on the statement.
 - (c) The taxpayer's underpayment directly results from this reliance.
- B. Each employee of the department, at the time any oral advice is given to any person, shall inform the person that the department is not bound by such oral advice.
- C. For purposes of this section:
 - 1. "Tax return form" includes the instructions that the department prepares for use with the tax return form whether the form or instructions are provided on paper or by electronic means.
 - 2. "Tax ruling" means a statement issued by the director and denominated as a tax ruling or a tax procedure.

A.R.S. § 42-2078 states:

- A. Unless expressly authorized by law, the department shall not apply any newly enacted law retroactively or in a manner that will penalize a taxpayer for complying with prior law.
- B. If the department adopts a new interpretation or application of any provision of this title or title 43 or determines that any of those provisions applies to a new or additional category or type of taxpayer, and the change in interpretation or application is not due to a change in the law:
 - 1. The change in interpretation or application applies prospectively unless it is favorable to taxpayers.
 - 2. The department shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.
 - 3. The change is an affirmative defense in any administrative or judicial action for retroactive assessment of tax, interest and penalties to taxable periods before the new interpretation or application was adopted.
- C. Tax liabilities, penalties and interest paid before a new interpretation or application of chapter 5 of this title by the department shall not be refunded unless the taxpayer requesting the refund provides evidence satisfactory to

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the department that the amounts will be refunded to the person who paid an added charge to cover the tax.

- D. For the purposes of this section, "new interpretation or application" includes policies and procedures adopted by administrative rule, tax ruling, tax procedure or instructions to a tax return.

A.R.S. § 42-2101 states:

- A. The department may issue private taxpayer rulings to taxpayers and potential taxpayers on request. Each request shall be in writing and shall:
1. State the name, address and, if applicable, taxpayer identifying number of the taxpayer or potential taxpayer who requests the ruling.
 2. Describe all facts that are relevant to the requested ruling.
 3. State whether, to the best knowledge of the taxpayer or potential taxpayer, the issue or related issues are being considered by the department in connection with an active audit, protest or appeal that involves the taxpayer or potential taxpayer and whether the same request has been or is being submitted to another taxing authority for a ruling.
 4. Be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer or potential taxpayer.
- B. A private taxpayer ruling may be revoked or modified by either:
1. A change or clarification in the law that was applicable at the time the ruling was issued, including changes or clarifications caused by legislation, adopted administrative rules and court decisions.
 2. Actual written notice by the department to the last known address of the taxpayer or potential taxpayer of the revocation or modification of the private taxpayer ruling.
- C. With respect to the taxpayer or prospective taxpayer to whom the private taxpayer ruling was issued, the revocation or modification of a private taxpayer ruling shall not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification and the department shall not assess any penalty or tax attributable to erroneous advice that it furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if:
1. The taxpayer reasonably relied on the private taxpayer ruling.

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2. The penalty or tax did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information.
- D. A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.
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- F. A private taxpayer ruling constitutes the department's interpretation of the law or rules only as they apply to the taxpayer making, and the particular facts contained in, the request.
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- J. In this section, "private taxpayer ruling" means a written determination by the department issued on or after September 21, 1991 that interprets and applies one or more statutes contained in this title or title 43 and any applicable administrative rules that the department has adopted to the specific prospective facts described in the request for a private taxpayer ruling.

DISCUSSION:

The statutes governing the administration of Arizona tax laws direct the Department to assist in the compliance of taxpayers by providing them with information and advice. The Department is issuing this ruling as part of its continuing efforts to maintain an open line of communication with the public.

RULING:

It is the Department's practice to respond to requests for information from individuals and organizations concerning their statuses for tax purposes and the tax effects of their transactions. The Department provides this guidance in the form of private taxpayer rulings, tax rulings and tax procedures, information letters, tax information notices and publications, and oral advice.

This ruling explains the manner in which the Department provides information to taxpayers. The various documents issued by the Department are defined along with the reliance that may be placed on each document.

Private Taxpayer Rulings

A private taxpayer ruling (sometimes referred to as a "letter ruling") is a written document responding to a written inquiry by an individual or organization that is identified as a private

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taxpayer ruling request. Private taxpayer rulings are issued by the Tax Research and Analysis Section of the Department's Tax Policy and Research Division and are always identified as "private taxpayer rulings."

A private taxpayer ruling interprets and applies Arizona tax laws to a particular set of facts set forth by the requester. A private taxpayer ruling is issued for a specific fact situation. It does not apply to different fact situations of the requesting taxpayer or to other taxpayers. Private taxpayer rulings issued in response to requests received by the Department after July 17, 1994 are available for public inspection after all information that could identify the taxpayer and any other parties involved in the activity is redacted. See *Arizona General Tax Procedure* GTP 07-1 for more information on private taxpayer rulings and the procedure for requesting them.

Among other reasons listed in GTP 07-1, the Department will not issue private taxpayer rulings to issues that are subjects of existing audits, appeals, or refund claims with respect to taxpayers requesting the rulings or to anonymous or otherwise insufficiently identified requesters. A requesting taxpayers must be identified by name and identification number. Professional preparers or representatives acting on behalf of taxpayers must provide their names and individual identification numbers, as well as proof that they are authorized agents of the taxpayers requesting the private taxpayer rulings.

If the advice given by the Department in a private taxpayer ruling is found to be erroneous, the Department cannot assess any tax, interest or penalties attributable to the taxpayer following the erroneous advice if the taxpayer provided accurate and adequate information in the request and the taxpayer shows reasonable reliance on the ruling.

A taxpayer may rely on a private taxpayer ruling that the Department has issued to the taxpayer unless there was a misstatement or omission of material facts by the taxpayer or the taxpayer's representative. A taxpayer may not rely on a private taxpayer ruling issued to another taxpayer.

A taxpayer must submit a request for a private taxpayer ruling in writing. More information on the procedures for requesting, issuing, and revoking a private taxpayer ruling is provided in GTP 07-1.

Tax Rulings and Tax Procedures

A tax ruling is a public written statement of the Department's position that interprets Arizona tax laws and applies the law to a specific set of facts or a general category of taxpayers.

A tax procedure is a public written statement issued by the Department to assist taxpayers in the implementation of tax laws, administrative rules, and tax rulings by providing procedures that taxpayers may follow in order to achieve compliance.

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No penalties or interest will be assessed on any deficiency due to a statement in a tax ruling or procedure issued by the Department if the taxpayer reasonably relies on the statement and the underpayment of tax results directly from that reliance. See A.R.S. § 42-2052(A)(2). Unless based on a “new interpretation or application” of the tax statutes as defined in A.R.S. § 42-2078, the taxpayer will be liable for any tax that may be assessed.

See *Arizona General Tax Procedure* GTP 96-1 for more information on tax rulings and tax procedures and *Arizona General Tax Procedure* GTP 02-1 for the procedure to request an abatement of tax, interest, or penalties.

Information Letters, Statements of General Guidance, and Other Forms of Correspondence Issued by the Department

An information letter is a letter that responds to a written inquiry from taxpayers, taxpayer representatives, and various business, trade, and industrial associations or similar groups. The Department issues information letters only in response to written requests, never to oral inquiries.

An information letter may be issued if: (a) the taxpayer's inquiry indicates a need for general information that requires written assistance or advice on tax principles or applications; or (b) the taxpayer's request does not meet the requirements for a private taxpayer ruling request but the Department determines that written assistance or advice is appropriate. The Department may offer advice in an information letter by providing a general discussion of tax principles or applications. The discussion may incorporate references to relevant statutes, case law, administrative rules, and tax rulings or tax procedures.

Information letters are not private taxpayer rulings. They do not constitute statements of agency policy that apply, interpret, or prescribe the tax laws administered by the Department. In the event the advice given in an information letter is found to be erroneous, the Department will not assess penalties or interest directly attributable to the erroneous advice in response to a specific request from the taxpayer if the information provided by the taxpayer was adequate and accurate. Nevertheless, the taxpayer will be liable for any tax that may be assessed.

The Department's standard disclaimer for information letters is as follows:

This is an information letter and not a private taxpayer ruling. The advice it contains is solely dependent upon the adequacy and accuracy of the information provided. Therefore, inadequate and/or inaccurate taxpayer information could result in the imposition of additional tax, interest and penalties. Conversely, if the taxpayer information is correct but the Department later determines that this advice is erroneous, any penalties and interest directly attributable to following this advice will be abated.

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Although the Department provides oral advice to taxpayers, as discussed below, information letters will not be provided to persons currently under audit. Also, the Department cannot issue information letters to anonymous or otherwise insufficiently identified requesters. Moreover, in order to comply with Rule 31 of the Rules of the Arizona Supreme Court (see *Arizona General Tax Procedure* GTP 07-1 for further discussion), the Department generally cannot issue an information letter responding to a request made by taxpayer's agent or representative that is unaccompanied by a properly executed power of attorney. Instead, the Department may issue a statement of general guidance, which is designed to provide general advisory guidance that, while not providing a determination for a specific person, may be useful in helping the requester comply with the laws administered by the Department. Statements of general guidance are not binding on the Department, and the advice contained within is solely dependent upon the adequacy and accuracy of the information provided.

The Department's standard disclaimer for statements of general guidance is as follows:

This is a statement of general guidance. A statement of general guidance does not pertain to a specific identified client. The statement is designed to provide general advisory guidance that may be useful in complying with the laws administered by the Department. Statements of general guidance are not binding on the Department. In addition, the advice it contains is solely dependent upon the adequacy and accuracy of the information provided.

The Department may respond to a request for an information letter with:

- The issuance of an information letter;
- The issuance of a statement of general guidance;
- A request for additional information necessary to complete an information letter; or
- A response declining to answer the request, explaining why the issuance of an information letter is not appropriate, and, if applicable, explaining why a request should be submitted to the Tax Research and Analysis Section for a private taxpayer ruling.

The Department will usually decline to answer an information letter request when it is too fact-intensive to answer with a general discussion or if the Department has no current position on the issues raised in the request.

Note that the Department issues many forms of taxpayer correspondence that constitute neither information letters nor statements of general guidance, as these two categories of responses are described above. Examples include:

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- Collection letters,
- Assessments,
- Audit correspondence, including billings, no-change letters, and refund denials.

Consequently, the Department will always identify information letters and statements of general guidance as such. All correspondence will provide explanations of the level of reliance that taxpayers may reasonably expect to place on them.

Notices and Publications

Notices and publications issued by the Department are general guides to assist taxpayers in becoming familiar with Arizona tax laws. This category of documents includes both online and hard-copy versions of bulletins, brochures, pamphlets, and stuffers issued by the Department, as well as the *Arizona Tax News* publication.

Notices and publications are not intended to address complex issues in detail or to address a taxpayer's specific circumstance. If the information provided in a tax information notice or publication conflicts with Arizona tax laws, the language of the Arizona Revised Statutes and the Arizona Administrative Code will control.

If the information in a notice or publication issued by the Department is shown to be erroneous and a taxpayer shows reasonable reliance on that information, the taxpayer will be liable for any tax or interest which may result from the erroneous advice, but no penalties will be imposed.

Tax Forms and Instructions

Tax forms and instructions include the various tax return forms and instructions prescribed by the Department for the filing of tax information. If the information provided in the instructions to a tax return conflicts with Arizona tax laws, the language of the Arizona Revised Statutes and the Arizona Administrative Code will control.

No penalties or interest will be assessed on any deficiency due to a statement on a tax return form prepared by the Department if the taxpayer reasonably relies on the statement and the underpayment of tax results directly from that reliance. Nevertheless, the taxpayer will be liable for any tax that may be assessed. Also, if a taxpayer is issued a proposed assessment and fails to pay once the liability is found due and owing, interest begins to accrue from the date of the final assessment.

See *Arizona General Tax Procedure* GTP 96-2 for more information on tax forms and instructions.

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Oral Advice

Taxpayers often request oral advice from employees of the Department. The Department does not issue private taxpayer rulings, information letters, or statements of general guidance in response to oral requests. In addition, the Department does not issue oral rulings. Nevertheless, employees of the Department will ordinarily discuss issues relating to a particular tax situation with taxpayers or their representatives.

By statute, oral advice is not binding on the Department. In the event oral advice provided to a taxpayer is found to be erroneous, the taxpayer will be liable for any tax and interest and also may be liable for any associated penalties which are attributable to the taxpayer following the erroneous advice.